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H8/Election

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Fred ZACOUTO et al.

Group Art Unit: 3738

Appln. No. : 10/040,429
(Continuation of US application 09/200,855)

Examiner: B. Snow

Filed : January 9, 2002

For : SKELETAL IMPLANT

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TECHNOLOGY CENTER R3700

ELECTION WITH TRAVERSE

Commissioner For Patents
PO Box 1450,
Alexandria, Virginia 23313-1450

Sir:

In response to the Examiner's restriction requirement of June 12, 2003, the time set for response, with a one month extension of time, extending until August 12, 2003, Applicant hereby elects with traverse the species shown in Fig. 63 comprising claims 10-54. The above-noted election is made with traverse for the reasons set forth below.

In the Official Action, the Examiner indicated that all claims (10-54) were subject to restriction/election under 35 U.S.C. § 121. The Examiner requested election of one of the disclosed embodiments and indicated that no claims are generic.

Applicant submits that the Examiner has not fully considered the language of the claims, which are all readable at least on the embodiment shown in Fig. 63.

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Moreover, Applicant respectfully submits that the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction requirement were not required.

While the Examiner has alleged possible distinctions between the disclosed embodiments, the Examiner has not shown that a concurrent examination of these would present a "serious burden" on the Examiner. Nor has the Examiner properly and convincingly set forth an appropriate statement indicating that the search areas required to examine all of the species would not overlap one another.

Thus, for the above-noted reasons, and consistent with the office policy set forth above in M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction/election requirement in this application.

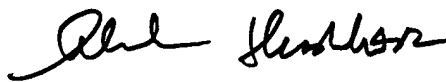
For all of the above reasons, the Examiner's restriction/election is believed to be improper. Nevertheless, Applicant has elected, with traverse, the invention defined by the species shown in Fig. 63, directed to claims 10-54, in the event that the Examiner chooses not to reconsider and withdraw the restriction/election requirement.

The Commissioner is hereby authorized to charge any fees necessary for the consideration of this preliminary amendment to deposit account No. 19-0089.

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Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
Fred ZACOUTO et al.


Reg. No. 45,294

Neil F. Greenblum
Reg. No. 28,394

July 17, 2003
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191